

ORIGINAL

BEFORE THE

Federal Communications Commission RECEIVED

WASHINGTON, D.C. 20554

JUL - 6 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
Amendment of Part 90 of the)
Commission's Rules to Eliminate)
Separate Licensing of End Users of)
Specialized Mobile Radio Systems)

PR Docket No. 92-79 ✓

To: The Commission

✓
REPLY COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE

The American Petroleum Institute (API), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission (Commission), hereby respectfully submits these Reply Comments regarding the Comments of selected parties that were submitted in response to the Commission's Notice of Proposed Rule Making (Notice) that initiated the above-styled proceeding.^{1/}

I. BACKGROUND

1. The Commission proposed in its Notice to eliminate the current licensing of end users who have

^{1/} Notice of Proposed Rule Making, (FCC 92-172), released May 5, 1992, 57 Fed. Reg. 20070 (May 11, 1992).

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mobiles operating on the mobile relay facilities of Specialized Mobile Radio (SMR) systems. Additionally, the Commission proposed to eliminate the annual and license renewal mobile loading reports required from SMR operators. In lieu of these requirements, the Commission proposed that SMR operators submit loading data to either expand an existing system, to establish a new system within 40 miles of an existing system, or at the conclusion of the initial five-year license term for a system located in a wait-list area. The Commission requested comments on its proposal that this required loading data reflect the average number of mobiles and control stations operating on the licensee's system on the first business day of each month for the six-month period immediately preceding the filing of the application (six-month average method).

2. API, like all of the commenters who have interests in the private land mobile radio services,^{2/} supported the Commission's proposals to eliminate the licensing of SMR end users and to eliminate the loading

^{2/} Several commenters in this proceeding are not directly involved in licensing or operation of private land mobile radio systems, but rather are involved in the regulation, licensing or operation of common carrier systems. The Comments filed by these parties address the loss of distinction between private and common carriers with the elimination of end user licensing. API will not address this issue in these Reply Comments.

reports currently required. Several of the parties, however, opposed the Commission's proposal to base the report on six-month average loading data. These parties argued that such an averaging method would place SMR systems at a disadvantage in expanding a system should substantial fluctuations in mobile use occur during a six-month period. These parties suggested that the loading data be based on actual use as of the date on which the application for expansion of a system, new system, or license renewal was filed ("snapshot" method).

3. API understands the objections raised by the parties in regards to the six-month average method. However, API's overall concern, as addressed in its Comments, is that the Commission retain sufficient oversight over the SMR systems to ensure that integrity of the licensing process is maintained for all 800/900 MHz service pool eligibles. The suggested "snapshot" method could result in the same mobile units being used as the basis for SMR system expansion in multiple situations in short succession. API, therefore, takes this opportunity to respond to this recommendation.

II. REPLY COMMENTS

4. Several parties opposed adoption of the Commission's proposal to require the loading data submitted to expand or establish a system, or renew a license be based on a six-month average. These parties argue that this method could skew the loading data submitted for a system in which mobile use is decreasing and for a system that significantly increases the mobile use in a short-time period. API agrees that an averaging method may work to the disadvantage of operators in the aforesaid situations. On the other hand, the proposed "snapshot" method may allow an SMR operator with a number of systems to systematically shift the mobile units from station to station to provide the underlying mobile count necessary for filing applications for additional 800/900 MHz channel assignments.

5. One commenter, The National Association of Business and Educational Radio, Inc. (NABER), recommended the "snapshot" method, but with an additional condition that the applicant be required to disclose whether any mobile units had been counted for loading purposes on another system within the past year. This condition would deter wholesale shifts of mobile loading from system to system. However, an SMR operator may be unaware that mobile units operating on its system were counted for mobile loading on a

third-party system or, because its business records would not reflect that the mobile unit was counted for mobile loading on another system, an operator may not feel compelled to disclose such use.

6. The Commission's averaging proposal, however, deters an operator from making significant reallocations of mobile units from system to system in a short time period merely to better his or her licensing position. Further, the multiple compilation of mobile units has far less effect when an averaging method is used. API, therefore, opposes adoption of the recommendation to allow loading data to be based on a "snapshot" method. As a compromise, API suggests that a three-month averaging method be implemented rather than a six-month averaging method. The shorter period of time would address, to some extent, the situations in which the commenters were concerned.

III. CONCLUSION

7. API favors adoption of the Commission's proposals described in the Notice; but API cannot support other commenters' proposal to use a "snapshot" method as opposed to an averaging method to report mobile loading data. A "snapshot" method is more subject to manipulation and will place non-SMR 800/900 MHz licensees and applicants at a disadvantage in obtaining 800/900 MHz spectrum. Should

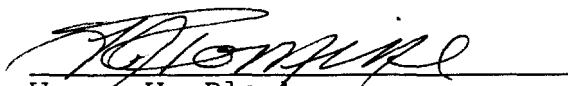
the Commission determine that a six-month averaging method may be unfair, API urges the Commission to retain an averaging method and reduce the number of months required.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute hereby respectfully requests the Federal Communications Commission to take final action in this proceeding in the manner consistent with the views expressed herein.

Respectfully submitted,

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